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ANDI MILLARD

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANDI MILLARD
Plaintiff,

CASE NO.
Civil Rights

v.

CHINA CHEF RESTAURANT;
ANNA TIEN, HELEN PANT, JOHN
TANG, ZHANG SIMING, dba
CHINA CHEF RESTAURANT;
EUGENE J. AND BARBARA
CASARETTO TRUST; EUGENE
CASARETTO and BARBARA
CASARETTO, TRUSTEES of the
EUGENE J. AND BARBARA
CASARETTO TRUST; and DOES 1-
10, Inclusive,

Defendants.

**COMPLAINT FOR DENIAL OF
ACCESS RIGHTS TO DISABLED
PERSONS IN VIOLATION OF
TITLE III OF THE AMERICANS
WITH DISABILITIES ACT OF
1990, AND OF CALIFORNIA
LAWS GUARANTEEING FULL
AND EQUAL ACCESS TO
PUBLIC FACILITIES;
INJUNCTIVE RELIEF AND
DAMAGES PER 42 USC 12101 *et*
seq.; CALIFORNIA CIVIL CODE
§§ 51, 52, 54, 54.1, 54.3 AND 55;
CALIFORNIA HEALTH AND
SAFETY CODE §§ 19955-19959**

DEMAND FOR JURY TRIAL

Plaintiff ANDI MILLARD complains of defendants CHINA CHEF
RESTAURANT; ANNA TIEN, HELEN PANT, JOHN TANG, ZHANG SIMING,
dba CHINA CHEF RESTAURANT; EUGENE J. AND BARBARA CASARETTO
TRUST; EUGENE CASARETTO and BARBARA CASARETTO, TRUSTEES of
the EUGENE J. AND BARBARA CASARETTO TRUST; and DOES 1-10,
Inclusive, and alleges as follows:

1 **1. INTRODUCTION:** This case involves the denial of accessible
 2 public facilities to a physically disabled wheelchair user, plaintiff Andi Millard, at
 3 the China Chef Restaurant located at 676 El Camino Real, San Carlos, California
 4 (hereinafter sometimes “Restaurant”). Plaintiff Andi Millard is a “qualified”
 5 physically disabled person, due to hemiplegia, who requires the use of a
 6 wheelchair and is unable to use public facilities which are not accessible to
 7 disabled members of the public. Plaintiff Andi Millard was denied her civil
 8 rights, under both California law and federal law, to full and equal access at these
 9 public facilities because they were not, and are not now, properly accessible to
 10 physically disabled persons who use wheelchairs. Plaintiff seeks injunctive relief
 11 to require defendants to make these facilities accessible to disabled persons, and
 12 to ensure that all disabled patrons will be provided accessible parking, entry,
 13 seating, paths of travel, and accessible restroom facilities. Plaintiff also seeks
 14 recovery of damages for her mental and emotional personal injuries and
 15 discriminatory experiences and for the continuing day-to-day denial of access and
 16 deterrence from returning which results from defendants’ failure to provide
 17 accessible facilities. Plaintiff also seeks recovery of statutory attorney fees,
 18 litigation expenses and costs.

19 **2. JURISDICTION:** This Court has jurisdiction of this action
 20 pursuant to 28 USC §1331 for violations of the Americans with Disabilities Act
 21 of 1990, 42 USC 12101 *et seq.* Pursuant to pendant jurisdiction, attendant and
 22 related causes of action arising from the same facts are also brought under
 23 California law, including but not limited to violations of California Government
 24 Code §4450 *et seq.*, Health & Safety Code §19955 *et seq.*, including §19959;
 25 Title 24 California Code of Regulations; and California Civil Code §§ 51, 52, 54,
 26 54.1 and 55.

27 **3. VENUE:** Venue is proper in this court pursuant to 28 USC 1391(b)
 28 because the subject property is located in this district and plaintiff’s causes of

1 action arose here.

2 4. **INTRADISTRICT:** This case should be assigned to the San Jose
3 intradistrict where the subject property is located and where plaintiff's causes of
4 action arose.

5 5. **PARTIES:** Plaintiff Andi Millard is a "qualified" physically
6 disabled person who is hemiplegic, cannot walk and who requires use of a
7 motorized wheelchair for mobility. Defendants CHINA CHEF RESTAURANT;
8 ANNA TIEN, HELEN PANT, JOHN TANG, ZHANG SIMING, dba CHINA
9 CHEF RESTAURANT; EUGENE J. AND BARBARA CASARETTO TRUST;
10 EUGENE CASARETTO and BARBARA CASARETTO, TRUSTEES of the
11 EUGENE J. AND BARBARA CASARETTO TRUST; and DOES 1-10,
12 Inclusive, are the owners, operators, lessors, and lessees of the property, building
13 and facilities located at 676 El Camino Real, San Carlos, California. This
14 restaurant, operated as "China Chef" is a public accommodation and/or business
15 entity subject to the requirements of California Health & Safety Code §19955 *et*
16 *seq.*, and of California Civil Code §§ 51, 52, and 54 *et seq.* These facilities have,
17 since July 1, 1970, undergone construction and/or "alterations, structural repairs,
18 or additions" requiring disabled access per §19955-19959 *et seq.* of the California
19 Health & Safety Code.

20 6. The true names and capacities of defendants Does 1 through 10,
21 Inclusive, are unknown to plaintiff who therefore sues said defendants by such
22 fictitious names. Plaintiff is informed and believes that each of the defendants
23 herein designated as a Doe is legally responsible in some manner for the events
24 and happenings herein referred to and caused injury and damages proximately
25 thereby to plaintiff; plaintiff prays leave of Court to amend this Complaint to
26 show such true names and capacities when the same have been ascertained.

27 7. Defendants CHINA CHEF RESTAURANT; ANNA TIEN, HELEN
28 PANT, JOHN TANG, ZHANG SIMING, dba CHINA CHEF RESTAURANT;

1 EUGENE J. AND BARBARA CASARETTO TRUST; EUGENE CASARETTO
 2 and BARBARA CASARETTO, TRUSTEES of the EUGENE J. AND
 3 BARBARA CASARETTO TRUST; and DOES 1-10, Inclusive, are and were the
 4 owners, operators, lessors and lessees of the subject property building, and
 5 facilities at all relevant times. Plaintiff is informed and believes that each of the
 6 defendants herein is the agent, employee or representative of each of the other
 7 defendants, and performed all acts and omissions stated herein within the scope of
 8 such agency or employment or representative capacity and is responsible in some
 9 manner for the acts and omissions of the other defendants in proximately causing
 10 the damages complained of herein.

11 8. Defendants CHINA CHEF RESTAURANT; ANNA TIEN, HELEN
 12 PANT, JOHN TANG, ZHANG SIMING, dba CHINA CHEF RESTAURANT;
 13 EUGENE J. AND BARBARA CASARETTO TRUST; EUGENE CASARETTO
 14 and BARBARA CASARETTO, TRUSTEES of the EUGENE J. AND
 15 BARBARA CASARETTO TRUST; and DOES 1-10, Inclusive, are and were the
 16 owners, operators, lessors and lessees of the subject China Chef Restaurant, a
 17 business in San Carlos, California. The Restaurant's premises and facilities are
 18 each a "public accommodation or facility" subject to the requirements of
 19 California Health & Safety Code § 19955 *et seq.* and of the California Civil Code,
 20 §§ 54, 54.1, and 54.3. At all times relevant to this complaint, defendants have
 21 held these facilities open to public use. The subject Restaurant is also a "business
 22 establishment," subject to the requirements of California Civil Code §§ 51 and 52.
 23 Such premises are "public accommodations" or "commercial facilities" subject to
 24 the requirements of §§ 301, 302 and 303 of the Americans with Disabilities Act of
 25 1990 (hereinafter also called the "ADA").

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**FIRST CAUSE OF ACTION: DAMAGES AND INJUNCTIVE RELIEF
FOR DENIAL OF FULL AND EQUAL ACCESS TO A PUBLIC
ACCOMMODATION: LACK OF ACCESS TO A PUBLIC FACILITY
(§§19955 *Et Seq.*, Health & Safety Code, §54.1 Civil Code)**

9. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the factual allegations contained in Paragraphs 1 through 8, above, and incorporates them herein by reference as if separately replied hereafter.

10. Plaintiff Andi Millard and other similarly situated mobility disabled persons are unable to use public facilities on a “full and equal” basis unless each such facility is in compliance with the provisions of California Health & Safety Code § 19955 *et seq.* Plaintiff is a member of that portion of the public whose rights are protected by the provisions of Health & Safety Code § 19955 *et seq.*

11. Health & Safety Code §§ 19955 and 19955.5 were enacted “To ensure that public accommodations or facilities constructed in this state with private funds adhere to the provisions of Chapter 7 (commencing with § 4450) of Division 5 of Title 1 of the Government Code.” Section 19955 also requires that “When sanitary facilities are made available for the public, clients, or employees ..., they shall be made available for persons with disabilities.” Title 24, California Code of Regulations, formerly known as the California Administrative Code, was in effect at the time of each alteration which occurred at such public facility since July 1, 1982, requiring access complying with the specifications of Title 24 whenever “any construction, alteration, structural repair or addition” was performed. Further, any construction alterations, structural repairs, or additions which occurred between July 1, 1970 and July 1, 1982, required access pursuant to the A.S.A. (American Standards Association) Regulations then in effect, per Government Code §4450ff. All such constructions and/or alterations were carried out by the current defendant owners and/or operators, lessors and/or lessees, or by their predecessors in interest, whose acts and omissions are the continuing and current responsibility of all current owners, operators, lessors and lessees.

12. **FACTUAL STATEMENT:** On or about April 20, 2007, plaintiff Andi Millard, driving her disabled licensed van, decided to purchase a take out lunch from the China Chef Restaurant, 676 El Camino Real, San Carlos. Plaintiff parked her van in a non-disabled parking space, as there were no properly designated and configured “accessible” parking spaces in the parking lot or in the parking spaces reserved for China Chef Restaurant. Being forced to park in a non-accessible space caused her anxiety and fear that, because there was no marked unloading zone (“access aisle”) as required adjacent to “accessible” and van-accessible parking spaces, she might become trapped and unable to re-enter her van and drive away if someone parked next to her vehicle.

13. When plaintiff left her van and reached the Restaurant’s front entrance in her motorized wheelchair, she found that she could not enter the building at all as there were two steps blocking her way, and no directional signage regarding any alternative accessible entrance. She attempted to find another entry to the Restaurant, but was unable to find any.

14. On information and belief, based on subsequent investigation by plaintiff’s representative, there are no entrances to the Restaurant which are accessible to disabled persons, including those who use wheelchairs, as required by statutes and regulations. The Restaurant’s restroom is also inaccessible for use by disabled persons in multiple respects and is also required to be made properly accessible for use by physically disabled persons.

15. On information and belief, all of the access problems encountered by plaintiff, or which may be encountered by plaintiff on any future visit, are due to defendants maintaining architectural barriers which are in violation of state and federal law, and which should be remedied, including but not limited to the necessity of providing a properly signed, located and configured van-accessible parking space with an 8' wide access aisle on the passenger side of the vehicle; an accessible entrance; accessible paths of travel at the entrance and throughout the

1 Restaurant; accessible restroom facilities, including a properly configured
2 accessible toilet stall with proper grab bars, and proper turning radius; and
3 accessible seating at tables as required by state and federal laws; and, on
4 information and belief, remedying other access deficiencies according to proof.
5 All such deficiencies should be remedied as part of this lawsuit. All of
6 defendants' facilities at the Restaurant must be brought into compliance with all
7 applicable federal and state code requirements.

8 16. Further, each and every violation of the Americans With Disabilities
9 Act of 1990 (as pled in the Third Cause of Action, *infra*, the contents of which are
10 repled and incorporated herein, word for word, as if separately repled), also
11 constitutes a separate and distinct violation of California Civil Code §54(c), thus
12 independently justifying an award of damages and injunctive relief pursuant to
13 California law, including but not limited to Civil Code §§54.3 and 55.

14 17. Further, each and every violation of the Americans With Disabilities
15 Act of 1990, (as pled in the Third Cause of Action, *infra*, the contents of which
16 are repled and incorporated herein, word for word, as if separately repled), also
17 constitutes a separate and distinct violation of California Civil Code §54.1(d),
18 thus independently justifying an award of damages and injunctive relief pursuant
19 to California law, including but not limited to Civil Code §§ 54.3 and 55.

20 18. On information and belief defendants at all times alleged herein
21 knew that the subject Restaurant premises denied full and equal access to disabled
22 persons in violation of multiple state and federal statutes and regulations, but
23 despite such knowledge continued to maintain and operate such Restaurant
24 premises and refused to make necessary physical changes to allow access to
25 plaintiff and other mobility disabled persons.

26 19. Plaintiff has been damaged by defendants' wrongful conduct, and
27 suffered emotional and psychological damages, as well as violation of her civil
28 rights, and seeks the relief that is afforded by Civil Code §§ 54.1, 54.3 and 55.

1 Plaintiff seeks actual damages, and statutory and treble damages against
 2 defendants for all periods of time mentioned herein. As to those of the defendants
 3 that currently own, operate, and/or lease the subject Restaurant, plaintiff seeks
 4 preliminary and permanent injunctive relief to enjoin and eliminate the
 5 discriminatory practices and barriers that deny equal access for disabled persons,
 6 and for reasonable attorney fees, litigation expenses and costs.

7 **20. INJUNCTIVE RELIEF:** Plaintiff seeks injunctive relief to prohibit
 8 the acts and omissions of defendants as complained of herein which are
 9 continuing on a day-to-day basis and which have the effect of wrongfully
 10 excluding plaintiff and other members of the public who are physically disabled
 11 wheelchair users from full and equal access to these public facilities. Such acts
 12 and omissions are the cause of humiliation and mental and emotional suffering of
 13 plaintiff Andi Millard in that these actions continue to treat her as an inferior and
 14 second class citizen and serve to discriminate against her on the sole basis that
 15 she is a person with disabilities who requires the use of a wheelchair for
 16 movement in public places. Ms. Millard is unable, so long as such acts and
 17 omissions of defendants continue, to achieve equal access to and use of these
 18 public facilities. Plaintiff intends to return to defendants' restaurant once it is
 19 made properly accessible, but cannot do so until the premises are brought into
 20 compliance with federal and state requirements for accessibility for persons who
 21 use wheelchairs. The acts of defendants have proximately caused and will
 22 continue to cause irreparable injury to plaintiff if not enjoined by this Court.

23 **21.** Wherefore plaintiff Andi Millard asks this Court to preliminarily and
 24 permanently enjoin any continuing refusal by defendants to grant full and equal
 25 access to herself and other disabled persons in the respects complained of and to
 26 require defendants to comply forthwith with the applicable statutory requirements
 27 relating to access for disabled persons. Such injunctive relief is provided by
 28 California Health & Safety Code §19953 and Civil Code §55, and other law.

22. At all times relevant to this action, California Civil Code §§ 54 and 54.1 has provided that physically disabled persons are not to be discriminated against because of physical handicap or disability. Civil Code § 54 provides:

Individuals with disabilities or medical condition have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places.

Civil Code § 54.1 provides that:

(a)(1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities,... and privileges of all common carriers, airplanes, motor vehicles,...or any other public conveyances or modes of transportation... hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

23. As a result of the denial of equal access to the facility and due to the acts and omissions of defendants and each of them in owning, operating, leasing, constructing, altering, and maintaining the subject facility, plaintiff suffered a violation of her Civil Rights including but not limited to rights under Civil Code §§54 and 54.1 , all to her damages as hereinafter stated. Defendants' actions and omissions to act constitute discrimination against plaintiff on the sole basis that she was and is physically disabled and unable, because of the architectural barriers created and/or maintained by the defendants in violation of the subject laws, to use the public facilities on a full and equal basis as other persons.

24. Plaintiff requests that the Court award damages pursuant to Civil Code §54.3 and other law and attorney fees, litigation expenses, and costs pursuant to Health & Safety Code §19953, Civil Code §54.3 and 55, Code of Civil Procedure §1021.5 and other law, all as hereinafter prayed for.

25. **FEES AND COSTS:** As a result of defendants' acts and omissions, plaintiff has been required to incur attorney fees, litigation expenses, and costs as

provided by statute, in order to enforce plaintiff's rights and to enforce provisions of the law protecting access for disabled persons and prohibiting discrimination against disabled persons. Plaintiff therefore seeks recovery of all reasonable attorney fees, litigation expenses, and costs, pursuant to the provisions of Civil Code §§54.3 and 55. Additionally, plaintiff's lawsuit is intended to force the defendants to make their facilities accessible to all disabled members of the public, justifying "public interest" attorney fees, litigation expenses and costs pursuant to the provisions of Code of Civil Procedure §1021.5 and other applicable law.

Wherefore plaintiff prays for relief as hereinafter stated:

**SECOND CAUSE OF ACTION:
VIOLATION OF UNRUH CIVIL RIGHTS ACT
CALIFORNIA CIVIL CODE SECTIONS 51 AND 52,
ON THE BASIS OF DISABILITY**

26. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the factual allegations contained in Paragraphs 1 through 25, above, and incorporates them herein by reference as if separately replied hereafter.

27. At all times herein mentioned, the Unruh Civil Rights Act, California Civil Code §51(b), provided that:

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, or medical condition are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

Per §51(f),

A violation of the right of any individual under the Americans With Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.

28. Plaintiff suffered damages as above described as a result of defendants' violation of California Civil Code §§ 51(b) and 51(f) in multiple regards, including but not limited to violations of the ADA, as described in the

1 Third Cause of Action, *infra*, the contents of which cause of action is
 2 incorporated herein as if separately repled. California Civil Code §52(a) provides
 3 that each such violation entitles plaintiff to “the actual damages, and any amount
 4 that may be determined by a jury, or a court sitting without a jury, up to a
 5 maximum of three times the amount of actual damage but in no case less than four
 6 thousand dollars (\$4,000), and any attorney’s fees that may be determined by the
 7 court in addition thereto...”

8 WHEREFORE, plaintiff prays for damages and injunctive relief as
 9 hereinafter stated.

10
 11 **THIRD CAUSE OF ACTION:**
 12 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990**
42 USC §12101FF

13 29. Plaintiff repleads and incorporates by reference, as if fully set forth
 14 again herein, the allegations contained in Paragraphs 1 through 28 of this
 15 Complaint, and incorporates them herein as if separately repled.

16 30. Pursuant to law, in 1990 the United States Congress made findings
 17 per 42 USC §12101 regarding physically disabled persons, finding that laws were
 18 needed to more fully protect “some 43,000,000 Americans” with “one or more
 19 physical or mental disabilities;” that “historically, society has tended to isolate
 20 and segregate individuals with disabilities;” that “such forms of discrimination
 21 against individuals with disabilities continue to be a serious and pervasive social
 22 problem;” that “the Nation’s proper goals regarding individuals with disabilities
 23 are to assure equality of opportunity, full participation, independent living, and
 24 economic self sufficiency for such individuals;” and that “the continuing
 25 existence of unfair and unnecessary discrimination and prejudice denies people
 26 with disabilities the opportunity to compete on an equal basis and to pursue those
 27 opportunities for which our free society is justifiably famous...”

28 31. Congress stated as its purpose in passing the Americans with

1 Disabilities Act (42 USC §12101(b))

2 It is the purpose of this Act

3 (1) to provide a clear and comprehensive national mandate for the
4 elimination of discrimination against individuals with disabilities;

5 (2) to provide clear, strong, consistent, enforceable standards addressing
6 discrimination against individuals with disabilities;

7 (3) to ensure that the Federal Government plays a central role in enforcing
8 the standards established in this act on behalf of individuals with
9 disabilities; and

10 (4) to invoke the sweep of congressional authority, including the power to
11 enforce the fourteenth amendment and to regulate commerce, in order to
12 address the major areas of discrimination faced day-to-day by people with
13 disabilities. (Emphasis added)

14 32. As part of the Americans with Disabilities Act, Public Law 101-336,
15 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations
16 and Services Operated by Private Entities" (42 USC 12181ff). The subject
17 property and facility is one of the "private entities" which are considered "public
18 accommodations" for purposes of this title, §301(7)(B), which includes any "a
19 restaurant, bar, or other sales or rental establishment serving food or drink."

20 33. Pursuant to §302, 42 USC §12182, "No individual shall be
21 discriminated against on the basis of disability in the full and equal enjoyment of
22 the goods, services, facilities, privileges, advantages, or accommodations of any
23 place of public accommodation by any person who owns, leases, or leases to, or
24 operates a place of public accommodation."

25 34. Among the general prohibitions of discrimination
26 were included, in § 302(b)(1)(A):

27 § 302(b)(1)(A)(i): "DENIAL OF PARTICIPATION. -- It shall be
28 discriminatory to subject an individual or class of individuals on the basis of a
disability or disabilities of such individual or class, directly, or through
contractual, licensing, or other arrangements, to a denial of the opportunity of the
individual or class to participate in or benefit from the goods, services, facilities,

1 privileges, advantages, or accommodations of an entity.”

2 § 302(b)(1)(A)(ii): “PARTICIPATION IN UNEQUAL BENEFIT -- It shall
3 be discriminatory to afford an individual or class of individuals, on the basis of a
4 disability or disabilities of such individual or class, directly, or through
5 contractual, licensing, or other arrangements with the opportunity to participate in
6 or benefit from a good, service, facility, privilege, advantage, or accommodation
7 that is not equal to that afforded to other individuals.”

8 § 302(b)(1)(A)(iii): “SEPARATE BENEFIT. -- It shall be discriminatory to
9 provide an individual or class of individuals, on the basis of a disability or
10 disabilities of such individual or class, directly, or through contractual, licensing,
11 or other arrangements with a good, service, facility, privilege, advantage, or
12 accommodation that is different or separate from that provided to other
13 individuals, unless such action is necessary to provide the individual or class of
14 individuals with a good, service, facility, privilege, advantage, or accommodation,
15 or other opportunity that is as effective as that provided to others.”

16 35. Among the specific prohibitions against discrimination were
17 included:

18 §302(b)(2)(A)(ii): “a failure to make reasonable modifications in policies,
19 practices, or procedures, when such modifications are necessary to afford such
20 goods, services, facilities, privileges, advantages, or accommodations to
21 individuals with disabilities...;”

22 §302(b)(A)(iii): “a failure to take such steps as may be necessary to ensure that
23 no individual with a disability is excluded, denied service, segregated, or
24 otherwise treated differently than other individuals because of the absence of
25 auxiliary aids and services...;”

26 §302(b)(2)(A)(iv): “a failure to remove architectural barriers, and communication
27 barriers that are structural in nature, in existing facilities... where such removal is
28 readily achievable;”

1 §302(b)(2)(A)(v): “where an entity can demonstrate that the removal of a barrier
2 under clause (iv) is not readily achievable, a failure to make such goods, services,
3 facilities, privileges, advantages, or accommodations available through alternative
4 methods if such methods are readily achievable.” The acts and omissions of
5 defendants set forth herein were in violation of plaintiff’s rights under the ADA,
6 Public Law 101-336, and the regulations promulgated thereunder, 28 CFR Part
7 36ff.

8 36. The removal of each of the barriers complained of by plaintiff as
9 hereinabove alleged, were at all times herein mentioned “readily achievable”
10 under the standards of the Americans With Disabilities Act. As noted
11 hereinabove, removal of each and every one of the architectural barriers
12 complained of herein were also required under California law. Further, on
13 information and belief, alterations, structural repairs or additions since January
14 26, 1992 have also independently triggered requirements for removal of barriers
15 to access for disabled persons per §303 of the ADA.

16 37. On information and belief, as of the date of plaintiff’s encounter at
17 the subject premises and the filing of this Complaint, the premises have denied
18 and continue to deny full and equal access to plaintiff and to other disabled
19 persons, including wheelchair users, in other respects, which violated plaintiff’s
20 rights to full and equal access and which discriminated against plaintiff on the
21 basis of her disability, thus wrongfully denying to plaintiff the full and equal
22 enjoyment of the goods, services, facilities, privileges, advantages and
23 accommodations, in violation of §302 of the ADA, 42 USC §12182.

24 38. Pursuant to the Americans with Disabilities Act, 42 USC 12188ff,
25 §308, Plaintiff is entitled to the remedies and procedures set forth in §204(a) of
26 the Civil Rights Act of 1964, 42 USC 2000(a)-3(a), as plaintiff is being subjected
27 to discrimination on the basis of disability in violation of this title or has
28 reasonable grounds for believing that she is about to be subjected to

1 discrimination in violation of §302 and §303. On information and belief,
 2 defendants have continued to violate the law and deny the rights of plaintiff and
 3 other disabled persons access to this public accommodation since on or before
 4 defendant's encounters as previously discussed. Pursuant to §308(a)(2), "In cases
 5 of violations of §302(b)(2)(A)(iv) and §303(a)... injunctive relief shall include an
 6 order to alter facilities to make such facilities readily accessible to and usable by
 7 individuals with disabilities to the extent required by this title."

8 39. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the
 9 Civil Rights Act of 1964, (42 USC 2000(a)-3(a), and pursuant to Federal
 10 Regulations adopted to implement the Americans with Disabilities Act of 1990.
 11 Plaintiff is a qualified disabled person for purposes of §308(a) of the ADA who is
 12 being subjected to discrimination on the basis of disability in violation of Title III
 13 and who has reasonable grounds for believing she will be subjected to such
 14 discrimination each time that she may attempt to use the property and premises.

15 40. As a result of defendants' acts and omissions in this regard, plaintiff
 16 has been required to incur legal expenses and attorney fees, as provided by
 17 statute, in order to enforce plaintiff's rights and to enforce provisions of the law
 18 protecting access for disabled persons and prohibiting discrimination against
 19 disabled persons. Plaintiff therefore seeks recovery of all reasonable attorney
 20 fees, litigation expenses (including expert consultant and expert witness fees) and
 21 costs, pursuant to the provisions of ADA § 505 (42 U.S.C. 12205) and the
 22 Department of Justice's regulations for enforcement of Title III of the ADA (28
 23 CFR 36.505). Additionally, plaintiff's lawsuit is intended not only to obtain
 24 compensation for damages to plaintiff, but also to require the defendants to make
 25 their facilities accessible to all disabled members of the public, justifying "public
 26 interest" attorney fees, litigation expenses and costs pursuant to the provisions of
 27 California Code of Civil Procedure § 1021.5.

28 WHEREFORE plaintiff prays for relief as hereinafter stated:

PRAYER

Plaintiff ANDI MILLARD prays that this Court:

1. Issue a preliminary and permanent injunction directing Defendants CHINA CHEF RESTAURANT; ANNA TIEN, HELEN PANT, JOHN TANG, ZHANG SIMING, dba CHINA CHEF RESTAURANT; EUGENE J. AND BARBARA CASARETTO TRUST; EUGENE CASARETTO and BARBARA CASARETTO, TRUSTEES of the EUGENE J. AND BARBARA CASARETTO TRUST; and DOES 1-10, Inclusive, as current owners, operators, lessors, and/or lessees of the property and premises to modify the above described property and premises and related facilities so that each provides full and equal access to all citizens, including persons with disabilities; and issue a preliminary and permanent injunction directing Defendants to provide facilities usable by Plaintiff and similarly situated persons with disabilities, and which provide full and equal access, as required by law;

2. Retain jurisdiction over the Defendants until such time as the Court is satisfied that Defendants' unlawful policies, practices, acts and omissions, and maintenance of inaccessible public facilities as complained of herein no longer occur, and can not recur;

3. Award to Plaintiff all appropriate damages, including but not limited to statutory damages, general damages and treble damages in an amount within the jurisdiction of the Court, all according to proof;

4. Award to Plaintiff all reasonable attorney fees, litigation expenses, and costs of this proceeding as provided by law;

5. For prejudgment interest pursuant to California Civil Code § 3291; and

6. Grant such other and further relief as this Court may deem just and proper.

//

1 Dated: September __, 2007

PAUL L. REIN
JULIE A. OSTIL
ANN WINTERMAN
LAW OFFICES OF PAUL L. REIN

5 Attorneys for Plaintiff
6 ANDI MILLARD

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a jury for all claims for which
10 a jury is permitted.

12 Dated: September __, 2007

PAUL L. REIN
JULIE A. OSTIL
ANN WINTERMAN
LAW OFFICES OF PAUL L. REIN

16 Attorneys for Plaintiff
17 ANDI MILLARD